

GUARDIANSHIP AND ADMINISTRATION BOARD  
HOBART

**DAC upon a review of an order for administration dated 14 March 2002**

GAB No. 1416

**REASONS FOR DECISION**

Anita Smith – President

Date of Hearing: 12 November 2003

Administration – review of administration following settlement of Supreme Court action – suitability of continuing appointment of private administrator – insufficient expertise, balancing leisure and enjoyment against investment for future requirements

*Guardianship and Administration Act 1995* (Tas), ss 51, and 54

1. The represented person, DAC, is a 22 year old man. He was almost 17 years old when he was struck by a car in September 1998. He suffered a severe head injury and has been left with permanent cognitive and behavioural deficits. He has sought compensation for these injuries through a Supreme Court action.
2. Pursuant to section 51(5) of the *Guardianship and Administration Act 1995* (“the Act”) on 14 March 2002 the Board appointed the represented person’s father, Mr C as the administrator subject to the following conditions:
  - “2. *That the powers and duties of the administrator are limited to the conduct of Supreme Court Action No. xxx of 2000 (hereinafter ‘the action’) including the power to settle or compromise the action and do all matters necessary and incidental thereto.*
  3. *That in the event the action is settled and monies are payable to the represented person the administrator is directed to apply to the Board for a review of this order.*”
3. By letter dated 30 October 2003, the represented person’s solicitor notified the Board that mediation of the matter had been successful and a review of the administration order was required prior to judgment being entered. The review was heard in a telephone hearing on 12 November 2003. The represented person, his

parents, Mr and Mrs C and their solicitor, Mr B, met in Burnie with Mr J from the Public Trustee. They linked by telephone to the Board's Senior Investigation and Liaison Officer, Mr M, also from the Public Trustee and myself in Hobart.

4. The hearing proceeded on the basis that there was no dispute between the parties that the factors in section 51(1) had all been made out. Deliberation at the hearing centred upon the factors outlined in section 54 of the Act as to the appointment of the most appropriate administrator.

### ***The Estate***

5. The represented person is in receipt of Centrelink benefits. He is not subject to an administration order for the management of those monies. His father has successfully assisted him in managing those monies without the need for an administration order.
6. The agreed damages arising from the motor vehicle accident were \$360,000.00. After deductions for MAIB payments, contributory negligence awards, statutory liabilities and costs, the payment will equate to a little over \$200,000.00. Mr B explained that the damages, prior to deductions, have been agreed under the following heads:
  - general damages - approximately \$40-45,000
  - lost earnings to the date of the settlement - approximately \$25,000
  - lost future earnings - approximately \$250,000
  - lost superannuation - approximately \$27,500
  - future medical expenses - approximately \$5000, and
  - miscellaneous expenses – the balance.

7. Evidence was given of plans to purchase a house and a car for the represented person from the settlement. I have no difficulty in approving such plans. It is expected that after those purchases a remainder of approximately \$100,000.00 will be available for the represented person. Future medical expenses are expected to be minimal. The payment of damages will have no effect upon the represented person's receipt of benefits as all exclusion periods have expired.
8. The represented person has no dependents at this stage, however he has a girlfriend who is pregnant and with whom he presently cohabits.

***Section 51(2) and (3)***

9. I was presented with two alternatives: appointment of Mr C senior or the Public Trustee as administrator. No less restrictive option would have been capable of meeting the represented person's medium term needs, undertaking the purchases of the house and car and overseeing the management of the remainder. For the purposes of section 51(2) I considered that the appointment of an appropriate administrator would be the best means of promoting the represented person's freedom of decision and action.

***Section 54(1)***

10. The Public Trustee is an approved administrator pursuant to section 54(1)(a). Therefore, my consideration of the factors in section 54(1)(d) and section 54(2) relate only to the possibility of the extended appointment of Mr C senior.
11. Mr C senior has consented to act as administrator. He gave evidence that he would proceed to deal with the estate in a manner that reflected his knowledge of the represented person's particular wishes and preferences. He stated on a number of occasions that he did not believe in investing the remainder money, or any portion

of it, on the represented person's behalf and that he saw no reason to do so. He also stated that, while he had purchased many cars, he had not previously purchased real estate. He did state that he would refer the purchase of a house to Mr B's firm for completion.

12. Mr C senior demonstrated in the hearing that he saw investment of remainder monies as an unnecessary fetter on his son's enjoyment of the award. He stated that he thought, following the purchase of a house and car, there was nothing wrong with the represented person "blowing the lot" on an overseas trip or just having a good time. Mr C senior rejected the notion that any of the remainder monies, even a small amount, should be invested for longer term needs which may arise, for example, as a result of being a home owner or a father. I took the view that rejection of the notion of any investment was not in the represented person's best interests for the purposes of section 54(1)(d)(i).
13. While I held no concerns about any potential for a conflict of interests in the appointment of Mr C senior for the purposes of section 54(1)(d)(ii), I was concerned that Mr C senior had insufficient expertise for the purposes of section 54(1)(d)(iv).
14. Mr C senior acknowledged that he did not have financial expertise, but stated that he had an uncle who has run a dry cleaning business for many years who had offered to assist in any way with the management of the monies. This uncle did not attend the hearing and no further assessment of his business acumen was available. It was evident that the arrangement would be a casual one and would be a substitute for professional financial advice. I was not satisfied that Mr C senior had sufficient access to appropriate advice as would assist in the responsible purchase of a home or the best use of the remainder of the damages.

***Sections 54(1)(d)(iii) and 54(2)***

15. The represented person clearly and consistently stated that he wished for his father to be appointed as administrator. He did so on the basis that his father had been assisting him with the management of his pension since the accident and that this arrangement had been working well. His preference for his father's appointment may also be based upon his father's relaxed attitude to expenditure.
16. The report from the Board's Investigation and Liaison Officer and the statements made at the hearing revealed that the relationships within the C family were compatible and had been tested over some time.
17. For the purposes of section 54(2) my concerns about the appointment of Mr C senior were that rather than prudently exercising a duty of care for the expenditure of the settlement monies, Mr C senior would indulge every request made by his son. To appoint an administrator who exists only to grant every request begs the question 'why appoint an administrator at all?'
18. Had Mr C senior presented at the hearing in a less cavalier manner, and showed some inclination to invest a part of the estate for future use by the represented person and his potential dependents, he would have been an apt administrator. He clearly has a good relationship with his son and wants the best for him. However his translation of that affection into the unfettered spending of \$100,000.00, or half of the damages payable, demonstrated an abrogation of the usual duties of administrators. For the purposes of section 54(1)(d)(iii) and section 54(2), I was unable to conclude that Mr C senior was a suitable person to be appointed as administrator.

***Conclusion:***

**Confidential:** Publication of this report is subject to approval pursuant to section 13 of the *Guardianship and Administration Act 1995*

19. The Board generally expects that an administrator will allow damages awards to be used for leisure and enjoyment where possible<sup>1</sup>. However it also expects that some monies will be used set aside to allow for medium to long term uses as well, especially where part of the calculation of damages has contemplated such long term aspects as loss of future earnings and the loss of superannuation. A responsible administrator needs to strike a balance between promoting the represented person's immediate enjoyment of life and keeping sufficient monies to responsibly provide for future requirements.
20. In accordance with section 51(3) I consider it is in the best interests of the represented person to appoint the Public Trustee as administrator for the management of settlement monies arising from Supreme Court Action no. xxx of 2000.
21. I considered that there was no need for an administrator to oversee the management of Centrelink benefits payable to the represented person and that the existing arrangements for the benefits represent the least restrictive alternative.
22. It would be appropriate to review the operation of the order in 12 months to allow an opportunity for the represented person and his family to comment upon the administration by the Public Trustee and to revisit attitudes towards investment.

#### **THE BOARD ORDERS:**

1. That the administration order continue in force.

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<sup>1</sup> Sharman v. Evans [1977] HCA 8; (1977) 138 CLR 563 per Gibbs and Stephen JJ at 27

2. That The Public Trustee be appointed as the represented person's administrator in place of Mr C.
3. That subject to clause 4 below the powers and duties of the administrator be those conferred by Division 4 of Part 7 of the *Guardianship and Administration Act 1995*.
4. That the represented person is to be responsible for that part of his estate consisting of his pension entitlement including any matters relating to the review, management or expenditure of such pension.
5. That a review of this order be conducted within 12 months.

That the order remains in effect to 11 November 2006.

**Anita Smith**  
**President**